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AN INTRODUCTION

TO

LEGAL MATERIALS

1991 REVISION

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CHAPTER ONE: AN INTRODUCTION TO LEGAL RESEARCH AND CITATION

(A) INTRODUCTION

This handbook is designed to introduce you to the resources of the Faculty of Law Library at the University of Toronto. It will teach you the basics of traditional legal research in conjunction with the Library assignments, and will hopefully continue to be a valuable reference as your research skills develop. It does not deal with computerized legal research.

This introductory chapter has two objectives. First, it introduces you to the principal sources of law and to the process of legal research. Second, it provides detailed information about cases and case citation; cases are the most important source of law that first-year students must contend with.

(B) SOURCES OF LAW

The phrase "sources of law" has two meanings. It is used to describe the various institutions or persons within the state that have the authority to make law. An obvious source of law in Ontario is the provincial legislature, whose law making activity comes in the form of statutes.

The phrase is also used to collectively describe all of the publications that a researcher can use to discover what the law is. This is the more popular use and the one that accords with other academic disciplines. That is, many of you will have used monographs and journal articles as your "sources" for writing papers in university courses.

In this section, "sources of law" is used in the second of the two ways delineated above, as descriptive of the various places you can go to find what the law is. Legal researchers divide sources of law into two types - primary and secondary. A primary source of law is a publication that reproduces the decisions of bodies that have the authority to make law. In the common law system, the legal system of most of the English speaking world, court decisions (cases) are a primary source of law. Statutes and regulations made by legislative authorities are a further primary source of law. The former are passed directly by legislatures; the latter are made by bodies such as ministers, local councils, and administrative agencies, which have been delegated the authority to do so by the legislatures.¹

¹ Obviously there is a close correlation between what is described here as "primary sources of law" and the "sources of law" encompassed by the first definition of that phrase above.

CHAPTER TWO: CANADIAN CASES - ABRIDGEMENTS AND DIGESTS

An essential element of one's legal education is learning how to find relevant cases and properly analyse them. Your substantive courses at law school are designed to teach you analytical skills. This chapter will outline the practical techniques for finding relevant cases.

(A) THE CANADIAN ABRIDGEMENT: INTRODUCTION

The Canadian Abridgement, Second Edition is the most comprehensive starting point for your research. It contains the case law affecting the common law provinces from 1809 until the present. It is cited as Can. Abr. (2nd). The Abridgement consists of two types of volumes: those which contain the case law digests, i.e. brief summaries of the cases, and those which provide access to the digests.

The editors of the Canadian Abridgement have produced a Guide to Research Using the Canadian Abridgement. This detailed guide should answer any questions that you may have that are not answered by the following outline.

The case law digests are contained in the following sets of volumes:

- (i) Main Work: 38 volumes, some of which have been revised and expanded since the main work of the second edition was completed.
- (ii) First Permanent Supplement: cited S, updates unrevised Main Work volumes (green labels) to the end of 1974.
- (iii) Second Permanent Supplement: cited 2S, updates to the end of 1979.
- (iv) Third Permanent Supplement: cited 3S, updates to the end of 1982.
- (v) Fourth Permanent Supplement: cited 4S, updates to the end of 1984.
- (vi) Fifth Permanent Supplement: cited 5S, updates to the end of 1986.
- (vii) Sixth Permanent Supplement: cited 6S, updated i) to vi) to the end of 1988.

- (viii) Revised Permanent Supplement (1986): cited [1986] RS, updates revised main work volumes (red labels) to end of 1986.
- (ix) Revised Permanent Supplement (1987-1988): cited [1987-1988] RS, updating revised main work volumes (red labels) to end of 1988.

The distinction here is - if the volumes have green labels (unrevised) to update the main work use permanent supplements.

If the labels on the main work are red (revised volumes) to update main work go directly to Revised Supplements.

- (x) Case Law Digest Binders 1, 2, and 3: a looseleaf service which contains quarterly cumulations of 1989 and 1990 table of cases and case law digests published since the Sixth Permanent Supplement.
- (xi) Canadian Current Law: cited C.C.L., is a bi-weekly update of all the research features of the Abridgement, including the Case Law Digests. This service is not cumulative, so you must check every C.C.L. issue subsequent to the last update in the Case Law Binders, under "Jurisprudence".

CHAPTER FIVE: CANADIAN STATUTES AND REGULATIONS

(A) INTRODUCTION TO STATUTES

A statute begins as a bill, introduced in parliament or in a provincial legislative assembly by the government or a private member. Once passed it is referred to as an Act, or a statute. It is not law, however, until it has come into force.

A bill before the federal Parliament is given an alphanumeric name that reflects its origin and time of introduction. For example, Bill C-21 would be the twenty-first bill introduced in the House of Commons in a particular session. Had the bill originated in the Senate, its prefix would be "S". In provincial legislatures bills are numbered consecutively as they are introduced from the beginning of the session. Private member's bills are numbered with a separate prefix so they can be distinguished from government bills.

To pass, a federal bill must be read and voted on three times in both of the House of Commons and the Senate. A provincial bill must be read and voted on three times in the legislature. After the bill has been through the necessary readings, voted on and passed, it becomes an act of the legislative body which passed it, is assigned a chapter number, and is published in the annual volume of Statutes.

A bill comes into force in one of three ways:

- (i) The date of effect may be specified in the act itself in the last section.
- (ii) If no date of effect is specified, the Act comes into effect upon receiving Royal assent.
- (iii) An act can come into effect on a date "to be proclaimed". The proclamation date can be specified in the act itself; if not mentioned, the date can be found in separate lists in annual volumes. To update these lists, the Gazette for the jurisdiction should be consulted and/or the relevant section in Canadian Current Law: Legislation. Federal acts generally indicate the proclamation date in the last section; in acts of the Ontario legislature, any explicit reference to the proclamation date appears in the penultimate section.

Note that Acts may be proclaimed in force in part or in whole, and some sections may remain unproclaimed indefinitely. The federal and provincial statute citators, discussed below, should be used to determine the status of any statute that one is working with.

There is a final requirement that must be met before a federal bill becomes an enforceable Act of Parliament, and that is that it must be published in the Canada Gazette, Part III.

New statutes passed either by the federal Parliament or the Ontario legislature are published in bound "annual volumes". Each volume contains the legislation for the relevant calendar year.

Note that up to and including 1984 federal statutes were published in "sessional", not "annual", volumes. Each sessional volume contained the legislation of a particular session. A single session may extend over several years, in which case the sessional volume is identified with reference to each of the years in which the session was active. Thus you may come across a reference like this:

The Canada Ports Corporation Act, which was passed in 1983, is cited as:

S.C. 1980-81-82-83, c. 121.

Because sessions could be so long, the federal jurisdiction moved to the annual volume method of publishing statutes in 1985.

Note also that since amendments to statutes can only be made by other statutes, it is frequently necessary to refer to several sessional or annual volumes in order to obtain a version of an act that includes all the amendments made to it since its original enactment.

In order to offset this tendency for too many parts of statutes to become distributed over various sessional or annual volumes, all the sessional or annual volumes are periodically revised and re-enacted, and all amendments incorporated into their original Acts, in a series of volumes called revised statutes. These volumes are then enacted as a whole, and supercede the sessional and annual volume versions of the statutes. Revisions correct spelling mistakes, renumber sections, etc. and occasionally incorporate some changes in the ordering of an Act, which may change the interpretation of parts of it.

A statute remains in force until it is repealed by another statute. It may be repealed in whole or in part. Both the repealed and the repealing sections of the repealing statute are omitted from subsequent publications of revised statutes, although both will be noted in a table accompanying the revision. This ensures that a researcher using the revised statutes and their tables will be aware of any statutes that may have been enacted and repealed in the period between revisions.

CHAPTER SIX: ENGLISH LAW

(A) INTRODUCTION

The unique role that English case law has had and continues to have in the development of Canadian jurisprudence makes it essential that Canadian practitioners and students be familiar with it. English statutes are of much less importance to Canadian practice.

The formal independence of the Canadian judiciary is relatively recent: appeals from the Supreme Court of Canada to the Judicial Committee of the Privy Council in England were abolished in 1949, and the authority of the British Parliament to effectively repeal Canadian legislation was abjured only with the Statute of Westminster in 1931. Even after formal independence, the doctrine of stare decisis as well as respect for the intrinsic merits of subsequent decisions of the House of Lords, the Privy Council and the Court of Appeal has ensured the continued importance of English law in Canada. Increasingly, however, Canadian law is moving in different directions than the English courts.

(B) ENGLISH CASES: THE ENGLISH REPORTS and REVISED REPORTS

Prior to 1865, most law reporting in England was done by private reporters whose reports bore their names, and hence became known as the nominate reports. Hundreds of different series were published between the end of the fifteenth century and 1865. Most of them are re-printed in a 178 volume set called the English Reports, cited E.R..

The Revised Reports, cited R.R., is another set of re-prints of the nominate reports from the period 1785 to 1866. There is not complete duplication between the English Reports and the Revised Reports for this period, although the former set is more frequently used. Both sets are in the library.

HOW TO FIND A CASE IN THE E.R. OR R.R. GIVEN THE STYLE OF CAUSE

1. Consult the last two volumes of the English Reports. These volumes contain an index of cases that were decided before 1867.
2. Scan the alphabetical list of case names. Beside the case name you will find the citation of the case in the original nominate reporter. On the opposite side of the page is the volume number of the E.R. (in bold print).

CHAPTER SEVEN - AMERICAN LAW

(A) INTRODUCTION

In the last two decades Canadian courts have become increasingly willing to consider American decisions. A recent study which examined the frequency with which the Supreme Court of Canada refers to foreign cases, other than British ones, found that 75 per cent of such references were to American cases.

Before looking at the various sources of American law, it is useful to know something about the American court system, which is quite different to ours.

There are federal and state courts, each with jurisdictions of first instance (i.e. the initial hearing of a case) and appeal. Approximately two-thirds of the states have only two tiers, namely the county court, generally known as the Superior Court, and the Supreme Court. The other third have an intermediate appeal court, generally designated the Court of Appeal.

The federal courts comprise the District Court, which has jurisdiction in accordance with the United States Code, the Federal Court of Appeals, or Circuit Court, and the United States Supreme Court. For many issues that are initially heard in the state Superior Court, the highest appeal possible is to the Supreme Court of that state, unlike Canada where the Supreme Court of Canada has ultimate jurisdiction over any issue that may originate in any of the provinces.

(B) AMERICAN CASES - FEDERAL COURTS(i) Supreme Court of the United States

Official court reporting began in 1790 with the inception of the United States Reports, cited U.S., which remains the official edition of U.S. Supreme Court decisions. Citations to volumes of the U.S. Reports before volume 91 (1875) must include a reference to the particular official reporter of the Court. There were seven such reporters, as follows:

<u>Reporter</u>	<u>Volumes</u>	<u>Years</u>	<u>U.S. Reports</u>
Dallas	1 - 4	1790 - 1800	1 - 4
Cranch	1 - 9	1801 - 1815	5 - 13
Wheaton	1 - 12	1816 - 1827	14 - 25
Porters	1 - 16	1828 - 1842	26 - 41

